

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-816

January 8, 2002

MAINE PUBLIC UTILITIES COMMISSION
Imposition of Penalty Regarding Log on
America

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we accept an offer of \$20,000 from Log On America, Inc. (LOA) to settle all outstanding violations of Chapter 296 of the Commission's rules by LOA in association with complaints received by the Commission from consumers between October 10, 2000, and November 29, 2001.

II. BACKGROUND

On March 7, 2000, we granted LOA authority to provide facilities-based and resold competitive local exchange and interexchange service in Maine. A condition of LOA's approval to provide telecommunications service in Maine was to comply with all applicable Commission rules and state statutes.

Title 35-A M.R.S.A. Section 7106 and Chapter 296 (Selection of Primary Interexchange and Local Exchange Carriers) prohibit interexchange carriers from initiating a change in a customer's preferred telecommunications carrier without first receiving authorization from the customer.

Between October 2000 and December 2001, the Commission's Consumer Assistance Division (CAD) received complaints from 56 customers who alleged their preferred telecommunications carrier was changed to LOA without their authorization. Investigation by the CAD revealed that LOA initiated changes in the basic telephone service in 24 instances and the in-state toll service in 27 instances without the customers' authorization. For three customers, LOA provided third party verification tapes that documented the customers' refusal to authorize a carrier change. According to LOA, they were unable to obtain copies of the third party verification tapes from their third party verifier for the remaining customers.

On November 8, 2001, Commission staff met with LOA to discuss the violations. LOA agreed to pay an administrative penalty of \$20,000 to settle the consumer complaints.

III. DECISION

Section 7 of Chapter 296 authorizes the Commission to assess a penalty of up to \$5,000 for each day the violation continues, up to a maximum of \$40,000 for the first offense and a maximum of \$110,000 for subsequent offenses. In exercising such

authority, we are required to take into account “the severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts, the history of previous violations, and the amount necessary to deter future violations.”

LOA’s actions in submitting unauthorized carrier change orders persuade us that an administrative penalty is warranted against LOA for its violations of Chapter 296. LOA submitted orders to change the in-state toll service for three customers whose refusal to switch their service to LOA was documented in the third party verification. In 24 instances, LOA submitted orders to change both local and in-state toll services, but could not provide proof that the customers authorized the change in carriers to LOA.

We find, however, that the amount of the penalty in this case should be mitigated because of the fact that once the unauthorized carrier changes were brought to its attention, LOA quickly resolved the customer complaints and waived all charges for each customer. Indeed, LOA credited customers \$4,725.17 and has discontinued offering residential service until it can contract with a more reliable third-party verifier. In addition, LOA responded promptly and completely to all requests for information from the CAD. It appears to us that LOA took these violations seriously and will take all necessary actions to avoid such problems in the future.

Accordingly, we believe a penalty of \$20,000 constitutes a fair resolution of these violations, and in light of LOA’s prompt redress for its violations is fully sufficient to protect the public interest.

Dated at Augusta, Maine, this 8th day of January, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.